

*Prop. Legislation  
(entire page)*

OLC #78-2067/2

20 JUL 1978

NOTE FOR: Director of Central Intelligence

FROM: Frederick P. Hitz  
Legislative Counsel

SUBJECT: 21 July Meeting with Republican Leadership on  
Electronic Surveillance Legislation

1. On 21 July you will meet with individual members of the House Republican Policy Committee to discuss informally with the Republican Leadership Administration support of H.R. 7308 and S. 1566, the Electronic Surveillance bills. Bobby Inman has also been invited to this consultation session.

2. Congressional attendees will include Representatives John B. Anderson (R., Ill.), head of the Republican Conference; Robert H. Michel (R., Ill.), Republican Whip; and John J. Rhodes (R., Ariz.), Minority Leader. Representative Edward P. Boland (D., Mass.), Chairman, House Permanent Select Committee on Intelligence, and Representative Morgan F. Murphy (D., Ill.) may attend.

3. This meeting is in direct response to initiatives by Representative McClory (R., Ill.) who is attempting to garner support from members of the House Republican Policy Committee to oppose the electronic surveillance legislation, H.R. 7308, on the floor.

4. The House Rules Committee granted a rule for floor consideration of the electronic surveillance legislation. The interesting aspect of this rule, which contains no specific limitations or amendments, is that it would require that any proposed amendment be printed in the Congressional Record at least three days prior to its consideration on the floor. Representative McClory introduced on 18 July 1978 an amendment in the nature of a substitute to H.R. 7308. This substitute bill reflects the views Representative McClory has expressed all along on electronic surveillance legislation; his proposal essentially tracks the format of H.R. 7308 but in lieu of requiring judicial warrants to conduct foreign intelligence surveillance would require only a certification procedure in the Executive Branch.

5. Representative Murphy has also introduced an amendment to H.R. 7308; this amendment, while arguably of a technical nature, appears objectionable because it changes the standard for the manner in which common carriers protect the details of electronic surveillance carried out at the request of the Government.

6. You can expect questions at tomorrow's meeting to focus on determining just how strong the Administration support is for the bill. It is important that you strongly reiterate your support ~~for~~ this legislation.

7. Notwithstanding the efforts by Mr. McClory, the legislation is still likely to pass the House. There is no word yet on a date for floor action, but this will likely be decided shortly by the leadership.

8. I have attached several documents which may be helpful in indicating the way in which we have couched our support for the bill to date.



Frederick P. Hitz

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Attachments

☒ UNCLASSIFIED

☐ INTERNAL  
USE ONLY

☐ CONFIDENTIAL

☐ SECRET

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## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel  
6D15 HQ

EXTENSION

NO.

DATE

20 JUL 1978

STAT

TO: (Officer designation, room number, and building)

DATE

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Attached for your review is a brief background note and two documents which will serve to help prepare you for your meeting tomorrow, 21 July, at 3:00 p.m. with Republican Leadership regarding the Electronic Surveillance legislation. I will accompany you to the meeting which will be held in the office of Representative John B. Anderson (R., Ill.).

STAT

Frederick P. Hitz

*Tony Hapham  
is coming too.*

*I'd like to see  
the material on  
gone me for  
HPSCI, sharing*

*detailed provisions of when need  
warrant & draft charges in House*

*Bill from Senate*

Approved For Release 2004/10/28 : CIA-RDP81M00980R000700120041-7

Washington, D.C. 20505

22 June 1978

Honorable Robert W. Kastenmeier  
Subcommittee on Courts, Civil Liberties,  
and the Administration of Justice  
House of Representatives  
Washington, D.C. 20515

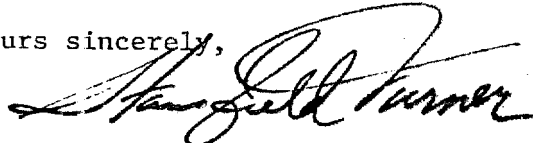
Dear Mr. Chairman:

I understand that your Subcommittee will be holding a hearing on 22 June on H.R. 7308, the "Foreign Intelligence Surveillance Act of 1978," as amended by the Permanent Select Committee on Intelligence. The purpose of this letter is to advise you that this legislation has my full support.

I support the bill because I believe it strikes a fair balance between intelligence needs and privacy interests, both of which are vitally important. In my view the legislation will place the activities with which it deals on a solid and reliable legal footing and help to rebuild public confidence in the national intelligence collection effort and in the agencies of government principally engaged in that effort.

The procedures envisaged by H.R. 7308 will unquestionably involve some risks that sensitive intelligence information may be disclosed. But on balance, these risks are acceptable, and while compliance may involve some burdens, I cannot say that any proper or necessary governmental purposes will be frustrated by the bill or that vital intelligence information, having such value as to justify electronic surveillance as a method of collection, will be lost. For these reasons I strongly urge that H.R. 7308 be promptly considered by your Subcommittee and that the Judiciary Committee report the bill favorably as soon as possible.

Yours sincerely,



STANSFIELD TURNER

19 JUN 1978

OGC 78-3976

MEMORANDUM FOR: Director of Central Intelligence

FROM : Anthony A. Lapham  
General Counsel

SUBJECT : H.R. 7308 (House Version of Domestic Wiretap Legislation)

REFERENCES : A. H.R. 7308 (As Amended by HPSCI)  
B. Your Prior Prepared Statements on the Wiretap  
Bill Before the Senate and House Committees

1. Action Requested: That you sign the attached letter to Representative Kastenmeier, Chairman of a House Judiciary subcommittee.\*

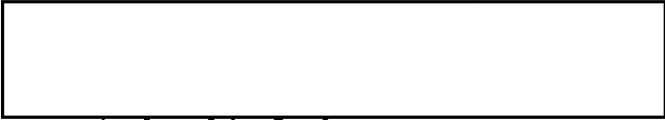
2. Background: According to the Attorney General's staff, the Administration game plan for House consideration of the domestic wiretap legislation threatens to become unraveled. As you are aware, the Senate approved S.1566, the companion bill to H.R. 7308, in April, and H.R. 7308 was recently reported favorably by HPSCI. Originally, it was hoped that Kastenmeier would recommend that the Judiciary Committee not take up the bill, clearing the way for a June vote on the House floor, and Kastenmeier did forward such a recommendation to Representative Rodino, the Chairman of the full Committee.

3. It is apparent that if the Judiciary Committee holds extensive hearings on H.R. 7308, however, chances for passage this session will be slim. Kastenmeier's letter evidently did not reflect a consensus of the subcommittee, and it now appears that the subcommittee will hold at least one day of hearings--on 22 June. The Administration will have only one witness--the Attorney General--and the Department of Justice is anxious to head off demands for testimony by community officials, believing that the circumstances would only provide potential footholds for those who wish to kill the legislation. The Department would like to see the subcommittee decide, immediately following the Attorney General's testimony or shortly thereafter, not to mark-up the bill, thus allowing it to go forward. For these reasons, the Department staff has requested that you send a letter to Kastenmeier indicating your support for the House bill along the lines of your testimony before HPSCI. Apparently, Admiral Inman is being asked to send a similar letter to Kastenmeier.

\*Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Majority: (5 D.) Representatives Kastenmeier, Danielson, Drinan, Santini and Ertel. Minority: (2 R.) Representatives Railsback and Butler.

4. H.R. 7308 as originally introduced was supported (and, in fact, sponsored) by the Administration, but several amendments were adopted by HPSCI. From the perspective of the community, several of these amendments, including provisions dealing with security procedures and training, were distinct improvements. Moreover, the bill was amended so as to exempt foreign embassies and missions from the warrant requirement. Several amendments, however, such as one which would criminalize failure to minimize properly and another which would make it easier for defendants to access sensitive information in criminal prosecutions brought against them, are not desirable, and the Administration objected to them. While these provisions are troublesome, the net gain was favorable to the Administration and clearly insufficient to withdraw support from the bill in its totality. Moreover, it is hoped that the Administration will be able to have objectionable provisions deleted when the legislation is in conference.

5. Recommendation: We recommend that you sign the attached letter to Kastenmeier. It is consistent with your previous testimony on this legislation and could very well spare you an appearance before the Judiciary Committee.

  
Anthony A. Lapham

Attachment

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MEMORANDUM FOR: Note for File

The attached letter was retrieved by LLM from the Hill and another sent in its place. This was done with the approval of Bruce Lehman of the Sub committee staff.

Date

FORM 101 USE PREVIOUS  
5-75 EDITIONS

Washington, D. C. 20505

22 June 1978

Honorable Robert W. Kastenmeier  
Subcommittee on Courts, Civil Liberties,  
and the Administration of Justice  
House of Representatives  
Washington, D.C. 20515

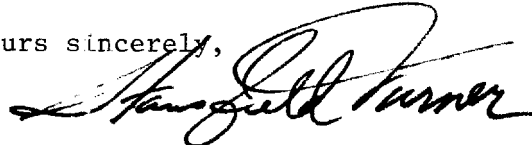
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The procedures envisaged by H.R. 7308 will unquestionably involve some risks that sensitive intelligence information may be disclosed. But on balance, these risks are acceptable, and while compliance may involve some burdens, I cannot say that any proper or necessary governmental purposes will be frustrated by the bill or that vital intelligence information, having such value as to justify electronic surveillance as a method of collection, will be lost. For these reasons I strongly urge that H.R. 7308 be promptly considered by your Subcommittee and that the Judiciary Committee report the bill favorably as soon as possible.

Yours sincerely,



STANSFIELD TURNER



Central Intelligence Agency  
Washington, D.C. 20505

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Attn: Mike Remington  
Staff Room #2

Honorable Robert W. Kastenmeier  
Subcommittee on Courts, Civil Liberties,  
and the Administration of Justice  
Committee on the Judiciary  
Room 2137 Rayburn House Office Building  
Washington, D.C. 20515

**VIA COURIER**

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July 18, 1975

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By Mr. OAKAR (for himself, Mr. CAVANAUGH, Mr. RAILSBACK, Mr. PEAKE, Mr. DRINAN, Mr. HANLEY, Mrs. BURKE of California, Mrs. PETTIS, and Mr. AUCCON):

H.R. 13520. A bill to amend the Coinage Act of 1965 to change the size, weight, and design of the 51 coin, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. ROYBAL (for himself, Mr. ANDERSON of California, Mrs. BURKE of California, Mr. GOLDWATER, and Mr. MOORHEAD of California):

H.R. 13521. A bill to repeal the act of June 23, 1936, to preserve to the city of Los Angeles all of its existing rights, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. SIMON (for himself, Mr. MITCHELL of Maryland, Mr. BAUCUS, Mr. BELLESON, Mr. BEVILL, Mr. BOLAND, Mr. BRODHEAD, Mr. DE LUCA, Mr. DRINAN, Mr. DUNCAN of Tennessee, Mr. DUNCAN of Oregon, Mr. EDWARDS of California, Mr. EILBERG, Mr. FASCELL, Mr. JACOBS, Mr. KEYS, Mr. KREBS, Mr. LERMAN, Mr. METCALFE, Mr. PANETTA, Mr. PEPPER, Mr. RANGEL, Mr. REUSS, Mr. ROE, and Mr. VENTO):

H.R. 13522. A bill to provide for the issuance of a commemorative postage stamp in honor of Dr. Ralph J. Bunche; to the Committee on Post Office and Civil Service.

By Mr. SIMON (for himself, Mr. MITCHELL of Maryland, Mr. AKAKA, Mr. DELLUMS, Mr. DERRICK, Mr. GARCIA, Mr. HEFNER, Mr. HEFTEL, Mrs. HOLZ, Mr. HORTON, Mr. CHARLES WILSON of Texas, and Mr. SEIBERLING):

H.R. 13523. A bill to provide for the issuance of a commemorative postage stamp in honor of Dr. Ralph J. Bunche; to the Committee on Post Office and Civil Service.

By Mr. SMITH of Iowa (for himself, Mr. PICKLE, Mr. CORMAN, Mr. CONTE, Mr. BRAD of Tennessee, Mr. BRINKLEY, Mr. CAPUTO, Mr. DUNCAN of Tennessee, Mr. EDGAR, Mr. FOWLER, Mr. HOWARD, Mr. KAZEN, Mr. LEACH, Mr. MARKEY, Mr. MOORHEAD of California, Mr. MURPHY of Illinois, Mr. SEBELIUS, Mr. SIMON, and Mr. TRAXLER):

H.R. 13524. A bill to amend the Internal Revenue Code of 1954 to provide tax relief to small businesses by establishing a graduated income tax rate for corporations; to the Committee on Ways and Means.

By Mr. TEAGUE (for himself, Mr. CARNEY, Mr. HILLIS, Mr. ROBERTS, Mr. HAMMERSCHMIDT, Mr. SATTERFIELD, and Mr. MONTGOMERY):

H.R. 13525. A bill relating to the employment of cemetery superintendents and assistant superintendents by the American Battle Monuments Commission; to the Committee on Veterans' Affairs.

By Mr. WALKER (for himself, Mrs. SPELLMAN, Mr. EVANS of Georgia, Mr. BEVILL, and Mr. PATTERSON of California):

H.R. 13526. A bill to require certain foreign persons and agents acting on behalf of foreign persons to record their purchases of agricultural land with the Secretary of Agriculture; to the Committee on Agriculture.

By Mr. OTTINGER:

H.J. Res. 1068. Joint resolution prohibiting trade and cultural and educational exchanges between the United States and the Soviet Union until such time as Anatoly Shcharansky and Aleksandr Ginsburg are set free and the Soviet Union otherwise meets its commitments under the Helsinki Final Act; to

the Committee on International Relations.  
By Mr. BEARD of Tennessee (for himself; Mr. TRENN, Mr. NICHOLS, Mr. DERWINSKI, Mrs. LLOYD of Tennessee, Mr. BOB WILSON, Mr. LAGOMARSINO, Mr. McDONALD, Mrs. HOET, Mr. YOUNG of Alaska, Mr. DEVINE, Mr. WALKER, Mr. BADHAM, Mr. LOTT, Mr. ICHORD, Mr. MILFORD, Mr. MADIGAN, Mr. EDWARDS of Oklahoma, Mr. HAGEDORN, Mr. TRIBLE, Mr. CRANE, Mr. ROBINSON, Mr. SIKES, Mr. VANDER JAGT, and Mr. MICHEL):

H. Res. 1269. Resolution to express the sense of the House that the Secretary of Defense should rescind his directive permitting in absentia discharges for deserters; to the Committee on Armed Services.

By Mr. BRECKINRIDGE (for himself, Mr. WAGGONER, Mr. MIKVA, Mr. DUNCAN of Tennessee, Mr. ASHLEY, Mr. MOORE, Mr. WHITEHURST, Mr. MCDADE, Mrs. CHISHOLM, Mr. EDGAR, Mr. FLOOD, Mr. FORD of Michigan, Mr. FORD of Tennessee, Mr. GILMAN, Mr. HAGEDORN, Mr. HYDE, Mr. KIVNESS, Mr. LIVINGSTON, Mr. MARES, Mr. MARIOTT, Mr. PATTERSON of California, Mr. RINALDO, Mr. ROBINSON, Mr. SPENCE, and Mr. STUBBS):

H. Res. 1270. Resolution relating to voluntary pooling of clerk-hire funds; to the Committee on House Administration.

By Mr. BRECKINRIDGE (for himself, Mr. BINGHAM, Mr. LEDERER, Mr. AMMERMAN, Mr. APPELGATE, Mr. BONKER, Mr. LAGOMARSINO, Mr. STOCKMAN, Mr. YOUNG of Alaska, Mr. DOWNEY, Mr. FISH, Mr. HUBBARD, Mr. ECKHARDT, Mr. CORNWELL, Mr. CORCORAN of Illinois, Mr. ANDREWS of North Carolina, Mr. ANNUNZIO, Mr. MURPHY of Illinois, Mr. NIX, Mr. STEED, Mr. PRICE, Mrs. SCHROEDER, Mr. CHARLES H. WILSON of California, and Mr. DYCKS):

H. Res. 1271. Resolution relating to voluntary pooling of clerk-hire funds; to the Committee on House Administration.

By Mr. BRECKINRIDGE (for himself, Mr. WON PAT, Mr. BEDALL, Mr. SKELTON, Mr. WEAVER, Mr. MURPHY of Pennsylvania, Mr. HANLEY, Mr. FLIPPO, Mr. GREEN, Mr. HIGHTOWER, Mr. DERRICK, Mr. FORSYTHE, Mr. MARKEY, Mr. LLOYD of California, Mr. LEGGETT, Mr. DAN DANIEL, Mr. MITCHELL of Maryland, Mr. GEMHARDT, Mr. DELLUMS, Mr. ROYBAL, Mr. ROSENTHAL, Mr. HAMILTON, Mr. CHARLES WILSON of Texas, Mr. RISENHOOVER, and Mr. MURPHY of Illinois):

H. Res. 1272. Resolution relating to voluntary pooling of clerk-hire funds; to the Committee on House Administration.

By Mr. BRECKINRIDGE (for himself, Mr. MCDADE, Mr. WALKER, Mr. ULLMAN, and Mr. SYMONS):

H. Res. 1273. Resolution relating to voluntary pooling of clerk-hire funds; to the Committee on House Administration.

By Mr. DRINAN:

H. Res. 1274. Resolution expressing the sense of the House of Representatives with respect to the selection of a site other than the Soviet Union for the 1980 summer Olympic games; to the Committee on International Relations.

By Mr. FRASER (for himself and Mr. VENTO):

H. Res. 1275. Resolution urging the United States and Canada to cooperate in their efforts to improve the quality of air in the boundary regions; to the Committee on International Relations.

By Mr. STOKES:

H. Res. 1276. Resolution providing for the further expenses of the Select Committee on Assassinations; to the Committee on House Administration.

## MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

454. By the SPEAKER: Memorial of the Legislature of the State of California, relative to Federal reclamation laws; to the Committee on Interior and Insular Affairs.

455. Also, memorial of the Legislature of the State of New York, relative to the regulation and taxation of the insurance business by the States; to the Committee on the Judiciary.

456. Also, memorial of the Legislature of the State of California, relative to foreign steel imports; to the Committee on Ways and Means.

457. Also, memorial of the Legislature of the State of California, relative to multiple employer trusts; jointly, to the Committees on Education and Labor, and Ways and Means.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BRINKLEY:

H.R. 13527. A bill for the relief of Bertha Knight Manuel; to the Committee on the Judiciary.

By Mr. WAXMAN:

H.R. 13528. A bill for the relief of Olivia Manaois Abrasaldo; to the Committee on the Judiciary.

## PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

505. By the SPEAKER: Petition of the American Veterans of World War II, Korea and Vietnam, Department of Massachusetts, Boston, Mass., relative to unionization, honorable service, and strengthening the armed forces of the United States; to the Committee on Armed Services.

506. Also, petition of the American Veterans of World War II, Korea and Vietnam, Department of Massachusetts, Boston, Mass., relative to lifting the arms sales embargo to Turkey; to the Committee on International Relations.

507. Also, petition of the North Atlantic Ports Association, Inc., Baltimore, Md., relative to toll stability for passage of vessels through the Panama Canal; to the Committee on Merchant Marine and Fisheries.

508. Also, petition of the American Veterans of World War II, Korea and Vietnam, Department of Massachusetts, Boston, Mass., relative to hospital care and employment services for veterans; to the Committee on Veterans' Affairs.

## AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 7308

By Mr. MCCLORY:

(Amendment in the nature of a substitute.)

—Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Foreign Intelligence Electronic Surveillance Act of 1978".

# TABLE OF CONTENTS

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Sec. 102. Authorization for electronic surveillance for foreign intelligence purposes.

Sec. 103. Use of information.

Sec. 104. Congressional oversight.

Sec. 105. Penalties.

Sec. 106. Civil liability.

Sec. 107. Retention of records.

## TITLE II—CONFORMING AMENDMENTS

Sec. 201. Amendments to chapter 119 of title 18, United States Code.

## TITLE III—EFFECTIVE DATE

Sec. 301. Effective date.

## TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

### DEFINITIONS

SEC. 101. As used in this title:

(a) "Foreign power" means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

Such term shall not apply to any United States person solely upon the basis of activities protected by the first amendment of the Constitution.

(b) "Agent of a foreign power" means—

(1) any person other than a United States person who—

(A) acts in the United States as an officer, member, or employee of a foreign power; or

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the foreign policy or security interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

(A) knowingly engages in clandestine intelligence activities for or on behalf of a foreign power under circumstances which indicate that such activities are contrary to the foreign policy or security interests of the United States;

(B) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(C) conspires with or knowingly aids or abets any person engaged in any activity described in subparagraph (A) or (B).

Such term shall not apply to any United

States person solely upon the basis of activities protected by the first amendment of the Constitution.

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life that are or may be a violation of the criminal laws of the United States or of any State, or that might involve a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) "Sabotage" means activities that involve or may involve a violation of chapter 105 of title 18, United States Code, or that might involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to and, if concerning a United States person, is necessary to the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to and, if concerning a United States person, is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto;

(3) the intentional acquisition, by an electronic, mechanical, or other surveillance device, of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Minimization procedures", with respect to a particular electronic surveillance, means specific procedures, reasonably designed in light of the purpose and technique of the surveillance, to minimize the acquisition, retention, and dissemination of nonpublicly available information concerning unconsenting United States citizens consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information. To achieve such minimization, the Attorney General shall adopt procedures which shall include, where appropriate—

(1) provisions for the destruction of unnecessary information acquired through the surveillance;

(2) provisions with respect to what information may be filed and on what basis, what information may be retrieved and on what basis, and what information may be disseminated, to whom, and on what basis;

(3) provisions for the deletion of the identity of any United States citizen acquired through the surveillance if such identity is not necessary to assess the importance of or to understand the information;

(4) provisions relating to the proper authority in particular cases to approve the retention or dissemination of the identity of any United States citizen acquired through the surveillance;

(5) provisions relating to internal review of the minimization process; and

(6) provisions relating to adequate accounting of information concerning United States citizens that is used or disseminated.

In addition, the procedures shall include provisions that require that nonpublicly available information that is not foreign intelligence information, as defined in subsection (e)(1), shall not be disseminated in a manner which identifies any individual United States citizen, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or to assess its importance; and shall allow for the retention and dissemination of information that is evidence of a crime that has been, is being, or is about to be committed and that is to be retained or disseminated for the purpose of preventing the crime or of enforcing the criminal law.

(h) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

(i) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(j) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(k) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(l) "Person" means any individual, including any officer or employee of the Federal

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Government, or any group, entity, association, corporation, or foreign power.

(m) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(n) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and the Trust Territory of the Pacific Islands.

#### AUTHORIZATION OF ELECTRONIC SURVEILLANCE TO OBTAIN FOREIGN INTELLIGENCE INFORMATION

SEC. 102. (a) Electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information may be authorized by the issuance of a surveillance certificate in accordance with subsection (b). If the target of the electronic surveillance is a United States citizen, the issuance of a certificate under oath and signed by the President stating that such electronic surveillance would be in accordance with the criteria and requirements of this title shall also be required.

(b) Electronic surveillance authorized under subsection (a) may only be performed according to the terms of a surveillance certificate issued in accordance with subsection (h).

(c) Electronic surveillance may be authorized under this section for the period necessary to achieve its purpose, except that—

(1) if the target of the surveillance is not a foreign power, the period of the surveillance may not exceed ninety days; and

(2) if the target of the surveillance is a foreign power, the period of the surveillance may not exceed one year.

(d) An electronic surveillance authorized under this section may be reauthorized in the same manner as an original authorization, but all statements required to be made under subsection (h) for the initial issuance of a surveillance certificate shall be based on new findings.

(e) (1) Notwithstanding any other provision of this title, if the Attorney General or Deputy Attorney General determines that—

(A) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before the requirements of subsection (a) can be followed; and

(B) the factual bases exist for the issuance of a surveillance certificate under subsection (h) to approve such surveillance,

the Attorney General or Deputy Attorney General, as the case may be, may authorize the emergency employment of electronic surveillance if, as soon as is practicable, but not more than forty-eight hours after the Attorney General or Deputy Attorney General authorizes such surveillance, the requirements of subsection (a) are met as they would have been.

(2) If the target is a United States citizen, the Attorney General or Deputy Attorney General shall notify the President at the time of such authorization that the decision has been made to employ emergency electronic surveillance.

(3) If the Attorney General or Deputy Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title be followed.

(4) If electronic surveillance is authorized under this subsection, it shall terminate when the information sought is obtained or after the expiration of forty-eight hours from the time of authorization, whichever is earliest. In the event that the requirements of subsection (a) are not met, all information

obtained or evidence derived from electronic surveillance authorized under this subsection shall be destroyed within forty-eight hours of such determination, except that a record of the facts surrounding the Attorney General's or Deputy Attorney General's authorization and the failure to meet the requirements of subsection (a) shall be made and preserved with all other records which under this title are required to be retained.

(f) Notwithstanding any other provision of this title, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment; and

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment; are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, United States Code, or section 605 of the Communications Act of 1934, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this title; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) (1) Upon the issuance of a surveillance certificate under this section, the Attorney General may direct a specified communication or other common carrier, or a landlord, custodian or other specified person, to—

(A) furnish any information, facility, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect the secrecy of such surveillance and will produce a minimum of interference with the services that such common carrier or person provides its customers; and

(B) maintain any records concerning such surveillance or the assistance furnished by such common carrier or person that such common carrier or person wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligence.

(2) Any direction by the Attorney General under paragraph (1) shall be in writing.

(3) The Government shall compensate any common carrier, landlord, custodian, or other specified person for the reasonable costs of its privileged

assistance furnished pursuant to a direction under paragraph (1).

(4) Any individual may, for reasons of conscience, refuse to comply with a direction from the Attorney General under paragraph (1).

(h) A surveillance certificate issued under subsection (a) shall be issued in writing and under oath by the Attorney General and an executive branch official or officials designated by the President from among those officials employed in the area of national security or national defense who were appointed by the President by and with the advice and consent of the Senate, and shall include—

(1) a statement—

(A) identifying or describing the target of the electronic surveillance, including a certification of whether or not the target is a United States citizen;

(B) certifying that the target of the surveillance is a foreign power or an agent of a foreign power; and

(C) certifying that each of the facilities or places at which the surveillance is directed is being or may be used by a foreign power or an agent of a foreign power;

(2) a statement of the basis for the certification under paragraph (1) that—

(A) the target of the surveillance is or is not a United States citizen;

(B) the target of the surveillance is a foreign power or an agent of a foreign power; and

(C) each of the facilities or places at which the surveillance is directed is being used or may be used by a foreign power or an agent of a foreign power;

(3) a statement of the proposed minimization procedures;

(4) a statement that the information sought is foreign intelligence information;

(5) a statement that the purpose of the surveillance is to obtain foreign intelligence information;

(6) if the target of the surveillance is a United States person, a statement that the information sought cannot reasonably be obtained by normal investigation techniques;

(7) if the target of the surveillance is not a foreign power, a statement of the basis for the certification under paragraph (4) that the information sought is foreign intelligence information;

(8) a statement of the period of time for which the surveillance is required to be maintained;

(9) a statement of the means by which the surveillance will be effected;

(10) if the nature of the intelligence gathering is such that the approval of an electronic surveillance under subsection (b) should not automatically terminate when the described type of information has first been obtained, a statement of the facts indicating that additional information of the same type will be obtained thereafter;

(11) a statement indicating whether or not an emergency authorization was made under subsection (e); and

(12) if more than one electronic, mechanical, or other surveillance device is to be involved with respect to such surveillance, a statement specifying the types of devices involved, their coverage, and the minimization procedures that will apply to information acquired by each type of device.

#### USE OF INFORMATION

SEC. 103. (a) Information acquired from an electronic surveillance conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this title shall be disclosed to its privileged

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character. No information acquired from an electronic surveillance pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used for or disclosed in any proceeding with the advance authorization of the Attorney General.

(c) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Before any State or political subdivision thereof may enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the State or political subdivision thereof must receive from the Attorney General an authorization to so use such information. Upon receiving such authorization, the State or political subdivision thereof shall notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) Whenever a court or other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e) and the Government concedes that information obtained or derived from an electronic surveillance pursuant to the authority of this title as to which the moving party is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding, the Government may make a motion before the court, or if the case is before a court of a State or a subdivision thereof, then before the United States district court of the judicial district in which the case is pending, to determine the lawfulness of the electronic

surveillance. Such motion shall stay any action in any court or authority to determine the lawfulness of the surveillance. In determining the lawfulness of the surveillance, the court shall, notwithstanding any other law, if the Attorney General files an affidavit under oath with the court that disclosure would harm the national security of the United States or compromise foreign intelligence sources and methods, review in camera the surveillance certificate and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making such determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials if there is a reasonable question as to the legality of the surveillance and if disclosure would likely promote a more accurate determination of such legality.

(g) Except as provided in subsection (f), whenever any motion or request is made pursuant to any statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain surveillance certificates or other materials relating to surveillance pursuant to the authority of this title, or to discover, obtain, or suppress any information obtained from electronic surveillance pursuant to the authority of this title, and the court or other authority determines that the moving party is an aggrieved person, if the Attorney General files with the court of appeals of the circuit in which the case is pending an affidavit under oath that an adversary hearing would harm the national security or compromise foreign intelligence sources and methods and that no information obtained or derived from an electronic surveillance pursuant to the authority of this title has been or is about to be used by the Government in the case before the court or other authority, the court of appeals shall, notwithstanding any other law, stay the proceeding before the other court or authority and review in camera and ex parte the surveillance certificate and such other materials as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court of appeals shall disclose, under appropriate security procedures and protective orders, to the aggrieved person or his attorney, portions of the surveillance certificate or other materials relating to the surveillance only if necessary to afford due process to the aggrieved person.

(h) If the court pursuant to subsection (f) or the court of appeals pursuant to subsection (g) determines the surveillance was not lawfully authorized and conducted, it shall, in accordance with the requirements of the law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court pursuant to subsection (f) or the court of appeals pursuant to subsection (g) determines the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Orders granting motions or requests under subsection (h), decisions under this section as to the lawfulness of electronic surveillance, and, absent a finding of unlawfulness, orders of the court or court of appeals granting disclosure of surveillance certificates or other materials relating to a surveillance shall be binding upon all courts of the United States and the several States except the courts of appeals and the Supreme Court, and shall be final orders for purposes of appeal.

(j) In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents may indicate a threat of death or serious bodily harm to any person.

#### CONGRESSIONAL OVERSIGHT

SEC. 104. On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all electronic surveillance under this title. Nothing in this chapter shall be deemed to limit the authority and responsibility of those committees to obtain such additional information as they may need to carry out their respective functions and duties.

#### PENALTIES

SEC. 105. (a) OFFENSE.—A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by statute; or

(2) violates section 102(a), 102(b), 102(d), 102(e), 103(a), 103(b), 103(j), or 107 or any order issued pursuant to this chapter, knowing his conduct violates such section or such order.

(b) DEFENSE.—(1) It is a defense to a prosecution under subsection (a) (1) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction;

(2) It is a defense to a prosecution under subsection (a) (2) that the defendant acted in a good faith belief that his actions were authorized by and taken pursuant to a surveillance certificate or otherwise did not violate any provision of this title, under circumstances where that belief was reasonable.

(c) PENALTY.—An offense described in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

(d) JURISDICTION.—There is Federal jurisdiction over an offense in this section if the person was an officer or employee of the United States at the time the offense was committed.

#### CIVIL LIABILITY

SEC. 106. CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power as defined in section 101 (a) or (b) (1) (A), respectively, who has been subjected to an electronic surveillance, or whose communication has been disclosed or used in violation of section 105 of this chapter shall have a cause of action against any such person who committed such violation and shall be entitled to recover—

(1) actual damages, but not less than liquidated damages of \$1,000 or of \$100 per day for each day of violation, whichever is greater;

(2) punitive damages, where appropriate; and

(3) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

#### RETENTION OF RECORDS

SEC. 107. All surveillance certificates and all documents used to support the issuance of surveillance certificates shall be retained for a period of not less than twenty years and shall be stored at the direction of the Attorney General under security procedures



approved by the Director of Central Intelligence.

## TITLE II--CONFORMING AMENDMENTS

### AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

Sec. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511 (2) (a) (i) is amended to read as follows:

"(i) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Electronic Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with--

"(A) a court order directing such assistance signed by the authorizing judge, or

"(B) a certification under oath and signed by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph."

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

"(c) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Electronic Surveillance Act of 1978, as authorized by that Act.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Electronic Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Electronic Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted."

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting "under this chapter" after "communication".

(e) Section 2518(4) is amended by inserting "under this chapter" after "wire or oral communication" both places it appears therein.

(f) Section 2518(9) is amended by striking out "intercepted" and by inserting "intercepted pursuant to this chapter" after "communication".

(g) Section 2518(10) is amended by striking out "intercepted" and by inserting "intercepted pursuant to this chapter" after "communication" the first place it appears therein.

(h) Section 2518(3) is amended by inserting "pursuant to this chapter" after "wire or oral communications" and after "granted or denied".

## TITLE III--EFFECTIVE DATE

### EFFECTIVE DATE

Sec. 301. The provisions of this Act and the amendments made hereby shall become effective upon the date of enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or a surveillance certificate authorizing that surveillance is obtained under title I of this Act within ninety days following such date of enactment.

(Amendments to the text.)  
--Page 32, strike out lines 4 through 25 and insert in lieu thereof the following:

(2) any person who--

(A) knowingly engages in clandestine intelligence activities for or on behalf of a foreign power under circumstances which indicate such activities are or may be contrary to the foreign policy or security interests of the United States;

(B) knowingly engages in sabotage or international terrorism or activities in preparation therefor, for or on behalf of a foreign power; or

(C) conspires with or knowingly aids or abets any person to engage in any activity described in subparagraph (A) or (B)

--Page 32, line 6, strike out "gathering".

--Page 32, strike out lines 10 through 16.

Page 32, line 17, strike out "(C)" and insert in lieu thereof "(B)".

Page 32, line 21, strike out "(D)" and insert in lieu thereof "(C)".

Page 32, lines 23 and 25, strike out "subparagraph (A), (B) or (C)" and insert in lieu thereof "subparagraph (A) or (B)".

--Page 39, after line 10, insert the following new clause (and redesignate the succeeding clauses accordingly):

(1) a foreign government or any component of a foreign government, whether or not such government is recognized by the United States;

--Page 45, line 9, strike out "or" and insert in lieu thereof "and".

## H.R. 7308

By Mr. BOB WILSON:

(Amendment in the nature of a substitute.)

--Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Foreign Intelligence Surveillance Act of 1978".

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## TITLE I--ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

### DEFINITIONS

Sec. 101. As used in this title:

(a) "Foreign power" means--

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations; not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

(b) "Agent of a foreign power" means--

(1) any person other than a United States person, who--

(A) acts in the United States as an officer, member, or employee of a foreign power; or

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who--

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) "International terrorism" means activities that--

(1) involve violent acts or acts dangerous to human life that are or may be a violation of the criminal laws of the United States or of any State, or that might involve a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended--

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

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involve or may involve a violation of chapter 105 of title 18, United States Code, or that might involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to and, if concerning a United States person, is necessary to the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to and, if concerning a United States person, is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Attorney General" means the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General.

(h) "Minimization procedures", with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition, retention, and dissemination of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e) (1), shall not be disseminated in a manner that identifies any individual United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and

(2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for the purpose of preventing the crime or enforcing the criminal law; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 102 (a), procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than twenty-four hours unless a court order under section 105 is obtained or unless the Attorney General determines that the information may indicate a threat of death or serious bodily harm to any person.

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a) (20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a) (1), (2), or (3).

(j) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

#### AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 102. (a) (1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) communications exclusively between or among foreign powers, as defined in section 101(a) (1), (2), or (3); or

(ii) the acquisition of technical intelligence from property or premises under the open and exclusive control of a foreign power, as defined in section 101(a) (1), (2), (3); and

(B) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h); and

if the Attorney General shall report such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the

Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him.

(3) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain. The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the Special Court having jurisdiction under section 103, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 103, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the Special Court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1) (A) of subsection (a) unless such surveillance may involve the acquisition of communications of any United States person.

#### SPECIAL COURTS

SEC. 103. (a) There is established a Special Court of the United States with jurisdiction throughout the United States to carry out the judicial duties of this title. The Chief Justice of the United States shall publicly designate at least one judge from each of the judicial circuits, nominated by the chief judges of the respective circuits, who shall be members of the Special Court and one of whom the Chief Justice shall publicly designate as the chief judge. The Special Court shall sit continuously in the District of Columbia.

(b) There is established a Special Court of Appeals with jurisdiction to hear appeals from decisions of the Special Court and any other matter assigned to it by this title. The Chief Justice shall publicly designate six judges, one of whom shall be publicly designated as the chief judge, from among judges nominated by the chief judges of the district courts of the District of Columbia, the Eastern District of Virginia and the District of Maryland, and the United States Court of Appeals for the District of Columbia, any three of whom shall constitute a panel for purposes of carrying out its duties under this title.

(c) The judges of the Special Court and the Special Court of Appeals shall be designated for six-year terms, except that the Chief Justice shall stagger the terms of the members originally chosen. No judge may serve more than two full terms.

(d) The chief judges of the Special Court and the Special Court of Appeals shall, in consultation with the Attorney General and the Director of Central Intelligence, establish such document, physical, personnel, or communications security measures as are necessary to protect information submitted to or



produced by the Special Court of Appeals from unauthorized disclosure.

(e) Proceedings under this title shall be conducted as expeditiously as possible. If any application to the Special Court is denied, the court shall record the reasons for that denial, and the reasons for that denial shall, upon the motion of the party to whom the application was denied, be transmitted under seal to the Special Court of Appeals.

(f) Decisions of the Special Court of Appeals shall be subject to review by the Supreme Court of the United States in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code, except that the Supreme Court may adopt special procedures with respect to security appropriate to the case.

(g) The Chief Judges of the Special Court and the Special Court of Appeals may, in consultation with the Attorney General and Director of Central Intelligence and consistent with subsection (d)—

(1) designate such officers or employees of the Government, as may be necessary, to serve as employees of the Special Court and Special Court of Appeals; and

(2) promulgate such rules or administrative procedures as may be necessary to the efficient functioning of the Special Court and Special Court of Appeals.

Any funds necessary to the operation of the Special Court and the Special Court of Appeals may be drawn from appropriations for the Department of Justice. The Department of Justice shall provide such fiscal and administrative services as may be necessary for the Special Court and Special Court of Appeals.

#### APPLICATION FOR AN ORDER

SEC. 104. (a) Each application for an order approving electronic surveillance under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 103. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title. It shall include—

(1) the identity of the Federal officer making the application;

(2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity, if known, or a description of the target of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that the purpose of the surveillance is to obtain foreign intelligence information;

ably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

(E) including a statement of the basis for the certification that—

(1) the information sought is the type of foreign intelligence information designated; and

(2) such information cannot reasonably be obtained by normal investigative techniques;

(8) a statement of the means by which the surveillance will be effected;

(9) a statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application;

(10) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this title should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and

(11) whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

(b) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the application need not contain the information required by paragraphs (6), (7) (E), (8), and (11) of subsection (a), but shall contain such information about the surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

(c) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(d) The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 105.

#### ISSUANCE OF AN ORDER

SEC. 105. (a) Upon an application made pursuant to section 104, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *Provided*, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed

is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) the proposed minimization procedures meet the definition of minimization procedures under section 101(h); and

(5) the application which has been filed contains all statements and certifications required by section 104 and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 104(a) (7) (E) and any other information furnished under section 104(d).

(b) An order approving an electronic surveillance under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the electronic surveillance;

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected;

(E) the period of time during which the electronic surveillance is approved; and

(F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person furnish the applicant forthwith any and all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (b) (1), but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

(d) (1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 101(a) (1), (2), or (3), for the period specified in the application or for one year, whichever is less.

(2) Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for

an extension and new findings made in the same manner as required for an original order, except that an extension of an order under this chapter for a surveillance targeted against a foreign power, as defined in section 101(a) (4), (5), or (6), may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period.

(3) At the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Notwithstanding any other provision of this title, when the Attorney General reasonably determines that—

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

(2) the factual basis for issuance of an order under this title to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge designated pursuant to section 103 is informed by the Attorney General or his designees at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this title is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information may indicate a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.

(f) Notwithstanding any other provision of this title, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment; and

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, United States Code, or section 605 of the Communications Act of 1934, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the person incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this title; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no content of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) Certifications made by the Attorney General pursuant to section 102(a) and applications made and orders granted under this title shall be retained in accordance with the security procedures established pursuant to section 103 for a period of at least ten years from the date of the application.

#### USE OF INFORMATION

Sec. 106. (a) Information acquired from an electronic surveillance conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this title shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, office, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) Whenever a court or other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e) and the Government concedes that information obtained or derived from an electronic surveillance pursuant to the authority of this title as to which the moving party is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding, the Government may make a motion before the Special Court to determine the lawfulness of the electronic surveillance. Unless all the judges of the Special Court are so disqualified, the motion may not be heard by a judge who granted or denied an order or extension involving the surveillance at issue. Such motion shall stay any action in any court or authority to determine the lawfulness of the surveillance. In determining the lawfulness of the surveillance, the Special Court shall, notwithstanding any other law, if the Attorney General files an affidavit under oath with the Special Court that disclosure would harm the national security of the United States or compromise foreign intelligence sources and methods, review in camera the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the Special Court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials if there is a reasonable question as to the legality of the surveillance and if disclosure would likely promote a more accurate determination of such legality, or if such disclosure would not harm the national security.

(g) Except as provided in subsection (f), whenever any motion or request is made pursuant to this title, the rule of the United

States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to surveillance pursuant to the authority of this title or to discover, obtain, or suppress any information obtained from electronic surveillance pursuant to the authority of this title, and the court or other authority determines that the moving party is an aggrieved person, if the Attorney General files with the Special Court of Appeals an affidavit under oath that an adversary hearing would harm the national security or compromise foreign intelligence sources and methods and that no information obtained or derived from an electronic surveillance pursuant to the authority of this title has been or is about to be used by the Government in the case before the court or other authority, the Special Court of Appeals shall, notwithstanding any other law, stay the proceeding before the other court or authority and review in camera and ex parte the application, order, and such other materials as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the Special Court of Appeals shall disclose, under appropriate security procedures and protective orders, to the aggrieved person or his attorney portions of the application, order, or other materials relating to the surveillance only if necessary to afford due process to the aggrieved person.

(h) If the Special Court pursuant to subsection (f) or the Special Court of Appeals pursuant to subsection (g) determines the surveillance was not lawfully authorized and conducted, it shall, in accordance with the requirements of the law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the Special Court pursuant to subsection (f) or the Special Court of Appeals pursuant to subsection (g) determines the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Orders granting or denying motions or requests under subsection (h), decisions under this section as to the lawfulness of electronic surveillance, and, absent a finding of unlawfulness, orders of the Special Court or Special Court of Appeals granting or denying disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except the Special Court of Appeals and the Supreme Court.

(j) In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents may indicate a threat of death or serious bodily harm to any person.

(k) If an emergency employment of electronic surveillance is authorized under section 105(e) and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

- (1) the fact of the application;
- (2) the period of the surveillance; and

(3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

#### REPORT OF ELECTRONIC SURVEILLANCE

Sec. 107. In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title; and

(b) the total number of such orders and extensions either granted, modified, or denied.

#### CONGRESSIONAL OVERSIGHT

Sec. 108. On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all electronic surveillance under this title. Nothing in this title shall be deemed to limit the authority and responsibility of those committees to obtain such additional information as they may need to carry out their respective functions and duties.

#### PENALTIES

Sec. 109. (a) OFFENSE.—A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by statute; or

(2) violates section 102(a)(2), 105(e), 105(f), 105(g), 106(a), 106(b), or 106(j) or any court order issued pursuant to this title, knowing his conduct violates such an order or this title.

(b) DEFENSE.—(1) It is a defense to a prosecution under subsection (a)(1) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(2) It is a defense to a prosecution under subsection (a)(2) that the defendant acted in a good faith belief that his actions did not violate any provision of this title or any court order issued pursuant to this title, under circumstances where that belief was reasonable.

(c) PENALTY.—An offense described in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

(d) JURISDICTION.—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

#### CIVIL LIABILITY

Sec. 110. CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101(a) or (b)(1)(A), respectively, who has been subjected to an electronic surveillance or whose communication has been disseminated or used in violation of section 109 shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other

investigation and litigation costs reasonably incurred.

#### TITLE II—CONFORMING AMENDMENTS AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

Sec. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(2)(a)(ii) is amended to read as follows:

"(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

"(A) a court order directing such assistance signed by the authorizing judge, or

"(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required;

setting forth the period of time during which the provisions of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph."

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

"(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted."

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting under this chapter" after communication"

(e) Section 2518(4) is amended by inserting "under this chapter" after both appearances of "wire or oral communication".

July 18, 1978

CONGRESSIONAL RECORD—HOUSE

Approved For Release 2004/10/28 : CIA-RDP81M00980R000700120041-7

H 6945

(f) Section 2518(9) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after "communication".

(g) Section 2518(10) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after the first appearance of "communication".

(h) Section 2519(3) is amended by inserting "pursuant to this chapter" after "wire or oral communications" and after "granted or denied".

TITLE III—EFFECTIVE DATE

EFFECTIVE DATE

Sec. 301. The provisions of this Act and the amendments made hereby shall become

effective thirty days following enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedure of this Act if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act within ninety days following the designation of the chief judges pursuant to section 103 of this Act.

H.R. 8729

By Mr. PEPPER:

(Amendment to the text of H.R. 11986, as reported when offered as an amendment.)

—Strike lines 9 and 10, beginning with "Issued" to "1968," of section 6453, (d), (2). (B) on page 16 of H.R. 11986 as reported.

H.R. 11392

By Mr. OTTINGER:

(Amendment to the amendment in the nature of a substitute (committee print of June 23, 1978)).

—Page 29, strike out line 6, strike out "In preparing any" and all that follows down through and ending on line 23.

—Page 30, line 21, strike out subsection (f), beginning on line 21 and ending on line 6 of page 31.

Page 31, line 7, strike out "(g)" and insert in lieu thereof "(f)".

July 19, 1978

CONGRESSIONAL RECORD — HOUSE

H 7047

Approved For Release 2004/10/28 : CIA-RDP81M00980R000700120041-7

By Mr. LUKEN (for himself and Mr. BENJAMIN):

H.R. 13531. A bill to establish a reasonable and fair preference for domestic products and materials in Government procurement and in procurement with Federal funds, and to promote free and fair trade in Government procurement of foreign products and materials; to the Committee on Government Operations.

By Mr. LUKEN (for himself, Mr. GILMAN, and Mr. GREEN):

H.R. 13532. A bill to amend the Internal Revenue Code of 1954 to provide a refundable income tax credit for insulation and other energy-saving property installed on an individual's principal residence; to the Committee on Ways and Means.

By Mr. MOAKLEY:

H.R. 13533. A bill to require that the Secretary of Energy notify any State of any investigation of any site in such State for the construction of any radioactive waste storage facility and allow such State to prevent the construction of such facility on such site by an action of the State legislature or a statewide referendum; jointly, to the Committees on Interior and Insular Affairs, and Interstate and Foreign Commerce.

By Mr. MOTIL (for himself, Mr. ANDREWS of North Dakota, Mr. JOHN L. BURTON, Mr. DERWINSKI, Mr. FISH, Mr. HUGHES, Mr. LLOYD of California, Mrs. LLOYD of Tennessee, Mr. LONG of Maryland, Mr. McCLOY, Mr. RAHALL, Mr. STANGELAND, and Mr. WHITEHURST):

H.R. 13534. A bill to reduce the amount of paperwork required by Federal agencies and to increase congressional awareness of the increase in paperwork required by bills and joint resolutions under consideration by Congress; jointly, to the Committees on Government Operations, and Rules.

By Mr. THOMPSON:

H.R. 13535. A bill to amend the National Labor Relations Act to provide that the duty to bargain collectively includes bargaining with respect to retirement benefits for retired employees; to the Committee on Education and Labor.

By Mr. PRESSLER:

H.R. 13536. A bill to increase alternatives to institutionalization for senior citizens; jointly, to the Committees on Interstate and Foreign Commerce and Ways and Means.

By Mr. WHITEHURST (for himself, Mr. BALDUS, Mr. BURGNER, Mr. DUNCAN of Tennessee, Mr. FRASER, Mr. HANNAFORD, Mr. KREBS, Mrs. LLOYD of Tennessee, Mr. MAZZOLI, Mr. NOLAN, Mr. OTTINGER, Mr. PANETTA, Mr. ROBINSON, Mr. ROE, Mr. SAWYER, Mr. STUMP, Mr. WAMPLER, Mr. BOB WILSON, and Mr. YOUNG of Alaska):

H.R. 13537. A bill to amend title 38, United States Code, to provide that remarriage of the surviving spouse of a veteran after age 60 shall not result in termination of dependency and indemnity compensation; to the Committee on Veterans' Affairs.

By Mr. WHITEHURST (for himself and Mr. GUYER):

H.R. 13538. A bill to amend title 38, United States Code, to provide that remarriage of

the surviving spouse of a veteran after age 60 shall not result in termination of dependency and indemnity compensation; to the Committee on Veterans' Affairs.

By Mr. CRANE:

H.R. 13539. A bill to amend the Federal Election Campaign Act of 1971 to provide that candidates for the Senate and the House of Representatives may receive payments from contributions received by them for loss of income occurring during their campaigns for office; to the Committee on House Administration.

By Mr. RINALDO:

H.R. 13540. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide that rescue squad members are entitled to death benefits made available under such act; to the Committee on the Judiciary.

By Mr. SISK:

H.R. 13541. A bill to provide more effective means for protecting the public interest in labor disputes affecting the marketing of agricultural products for processing, and for other purposes; to the Committee on Education and Labor.

By Mr. VANIK (for himself, Mr. PICKLE, Mr. ENGLISH, Mr. FLOOD, Mr. JACOBS, Ms. KEYS, Mr. LLOYD of California, Mr. MAZZOLI, Mr. MURPHY of Pennsylvania, Mr. PRICE, Mr. RYAN, Mr. SIMON, Mr. VOLKMER, Mr. WHITTEN, and Mr. WOLFF):

H.R. 13542. A bill to amend the Internal Revenue Code of 1954 to extend for 2 years certain tax cuts and the new jobs credit; to the Committee on Ways and Means.

By Mr. WAMPLER (for himself, Mr. DE LA GARZA, Mr. YATRON, Mr. WHITEHURST, Mr. IRELAND, Mr. LAGOMARSINO, Mr. MARTIN, Mr. STOCKMAN, Mr. KEMP, Mr. HUGHES, Mr. ERLKENBORN, Mr. O'BRIEN, Mr. ROBINSON, Mr. MCCORMACK, Mr. BEDELL, Mr. ROBERT W. DANIEL, Jr., Mr. WHITLEY, Mr. SEBELIUS, Mr. THONE, Mr. SYMMES, Mr. JOHNSON of Colorado, Mr. MAHIGAN, Mr. JEFFORDS, Mr. GRASSLEY, and Mr. HAGEDORN):

H.R. 13543. A bill to direct the Administrator of the Environmental Protection Agency to request the National Academy of Science to conduct a study concerning standardizing certain tests for determining potential carcinogenicity, and for other purposes; jointly, to the Committees on Agriculture, and Interstate and Foreign Commerce.

By Mr. KEMP:

H.R. 13544. A bill to provide for permanent tax rate reductions for individuals and businesses; to the Committee on Ways and Means.

By Mr. PRESSLER:

H. Con. Res. 668. Concurrent resolution expressing the sense of Congress that the authorization for the Oahe unit, James division, Missouri River Basin project, South Dakota should remain in effect; to the Committee on Interior and Insular Affairs.

By Mr. MCKINNEY:

H. Res. 1279. Resolution commemorating Thomas Alva Edison, American inventor; to

the Committee on Post Office and Civil Service.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. REUSS introduced a bill (H.R. 13545) for the relief of Margaret Dollinger Baloun, which was referred to the Committee on the Judiciary.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 7308

By Mr. MURPHY of Illinois:

—Page 40, line 14, strike out "in such a manner as will protect its secrecy" and insert in lieu thereof "unobtrusively".  
—Page 50, lines 8 and 9, strike out "in such manner as will protect its secrecy" and insert in lieu thereof "unobtrusively".

H.R. 8729

By Mr. VANIK:

(Amendments to the amendment containing the text of H.R. 11986.)

—Amend section 6454(b) of the Internal Revenue Code of 1954 as proposed to be inserted by the amendment containing the text of H.R. 11986 by adding at the end thereof the following new paragraph:

"(3) DENIAL OF INVESTMENT TAX CREDIT.—Replacement property taken into account in determining the credit under this subchapter shall not be treated as section 38 property (as defined by section 48(a)).

—In lieu of the matter proposed to be inserted by the amendment containing the text of H.R. 11986, insert the following:

TITLE III.—2-PERCENTAGE POINT REDUCTION IN EXCISE TAXES ON TRANSPORTATION BY AIR

SEC. 301. 2-PERCENTAGE POINT REDUCTION IN EXCISE TAXES ON TRANSPORTATION BY AIR.

(a) TRANSPORTATION OF PERSONS.—Subsections (a) and (b) of section 4261 of the Internal Revenue Code of 1954 (relating to transportation of persons by air) are each amended by striking out "8 percent" and inserting in lieu thereof "6 percent".

(b) TRANSPORTATION OF PROPERTY.—Subsection (a) of section 4271 of such Code (relating to transportation of property by air) is amended by striking out "5 percent" and inserting in lieu thereof "3 percent".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to transportation beginning on or after October 1, 1978.

H.R. 13385

By Mr. WEAVER:

—On line 4, page 1, after "1979," insert: "or ending the 15th day of the month following the month upon which the cost of servicing the public debt to the United States Treasury from March 31, 1978, first exceeds \$50,000,000,000, whichever date is soonest."

1 *effective date, unless the Attorney General determines im-*  
2 *mediate action is required and notifies the committees im-*  
3 *mediately of such minimization procedures and the reason*  
4 *for their becoming effective immediately.*

5 (2) *An electronic surveillance authorized by this sub-*  
6 *section may be conducted only in accordance with the At-*  
7 *torney General's certification and the minimization proce-*  
8 *dures adopted by him.*

9 (3) *With respect to electronic surveillance authorized*  
10 *by this subsection, the Attorney General may direct a speci-*  
11 *fied communication common carrier to--*

12 (A) *furnish all information, facilities, or technical*  
13 *assistance necessary to accomplish the electronic surveil-*  
14 *lance in such a manner as will protect its secrecy and*  
15 *produce a minimum of interference with the services*  
16 *that such carrier is providing its customers; and*

17 (B) *maintain under security procedures approved*  
18 *by the Attorney General and the Director of Central*  
19 *Intelligence any records concerning the surveillance*  
20 *or the aid furnished which such carrier wishes to*  
21 *retain.*

22 *The Government shall compensate, at the prevailing rate,*  
23 *such carrier for furnishing such aid.*

24 (b) *Applications for a court order under this title are*  
25 *authorized if the President has, by written authorization,*

*proposed to be  
amended by  
Rep. Murphy*



1           (A) that the minimization procedures be fol-  
2           lowed;

3           (B) that, upon the request of the applicant,  
4           a specified communication or other common carrier,  
5           landlord, custodian, or other specified person furnish  
6           the applicant forthwith any and all information,  
7           facilities, or technical assistance necessary to ac-  
8           complish the electronic surveillance in such man-  
9           ner as will protect its secrecy and produce a mini-  
10          mum of interference with the services that such  
11          carrier, landlord, custodian, or other person is  
12          providing that target of electronic surveillance;

13          (C) that such carrier, landlord, custodian, or  
14          other person maintain under security procedures  
15          approved by the Attorney General and the Director  
16          of Central Intelligence any records concerning the  
17          surveillance or the aid furnished that such person  
18          wishes to retain; and

19          (D) that the applicant compensate, at the pre-  
20          vailing rate, such carrier, landlord, custodian, or  
21          other person for furnishing such aid.

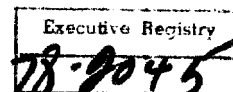
22          (c) Whenever the target of the electronic surveillance  
23          is a foreign power, as defined in section 101(a) (1), (2),  
24          or (3), and each of the facilities or places at which the sur-

proposed to  
be amended  
by Rep. Murphy

ROUTING AND RECORD SHEET				
SUBJECT: (Optional) Briefings on the Electronic Surveillance Bill				
FROM:		EXTENSION	NO.	
Legislative Counsel			DATE 19 July 1978	
TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		
1. DCI	7/20			Attached for your information is a note on two briefings on the Electronic Surveillance Bill.  (copy provided to DDCI 7/20)  oac/oac Please provide study materials for tonight - ST/oc 20 July
2. John				
3.				
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OLC #78-2332/1  
19 July 1978



NOTE FOR: Director of Central Intelligence  
Deputy Director of Central Intelligence

SUBJECT: Briefings on the Electronic Surveillance Bill

Mike O'Neil, House Permanent Select Committee on Intelligence Counsel, called with two invitations:

1. Friday, at a time yet to be worked out, with Representatives John B. Anderson (R., Ill.), head of the Republican Conference; Robert H. Michel (R., Ill.), Republican Whip; and John Rhodes (R., Ariz.), Minority Leader. [Chairman Edward P. Boland (D., Mass.) and Representative Morgan F. Murphy (D., Ill.) may attend.] The meeting is scheduled to take place in 1101 Longworth House Office Building, office of Congressman Anderson. The DCI and Bobby Inman have been invited. This is an effort by the Republican Leadership to determine how solid our support for the Electronic Surveillance Bill is. It is in the nature of an informal consultation.

2. The second invitation is for Wednesday, 26 July, in H-405 of the Capitol, at 9:00 a.m. The DCI, Bobby Inman, and FBI Director Webster have been invited by Speaker Thomas P. O'Neill (D., Mass.) to brief 50 or 60 Democratic House Members on the Surveillance Bill. Again, the thrust is to determine how strongly the Administration supports that which the Members are to vote on. This is a breakfast.

If the DCI is unavailable, the DDCI has been invited as his replacement. The Legislative Counsel has been invited to accompany on both occasions.

[Redacted signature box]

Frederick P. Hitz

STAT

cc: Tony Lapham